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BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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APR 05 1999

Common Carrier Bureau  
Network Service Division  
Office of the Chief

Petition by the New York State Department of  
Public Service for Additional Delegated Authority  
to Implement Number Conservation Measures

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NSD File No. L-99-21

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COMMENTS OF  
RCN TELECOM SERVICES, INC.

Federal Communications Commission  
Office of Secretary

RCN Telecom Services, Inc. ("RCN"), by undersigned counsel and pursuant to the Common

Carrier Bureau's March 5, 1999 Public Notice,<sup>1</sup> hereby submits its Comments in the above-captioned proceeding. Although RCN commends the New York Department of Public Service and the Public Service Commission (collectively, the "NYPSC") for recognizing the problems associated with number shortage and taking the initiative to begin to resolve those problems, RCN urges the Commission to be cautious in considering the NYPSC requests. Many of the conservation measures the NYPSC requests authority to implement, such as number pooling and unassigned number porting, are in the process of being considered by the Commission. The Commission should be hesitant to grant a state commission the authority to implement these measures until the Commission has adopted uniform federal guidelines. It is important that number conservation methods be consistent throughout the country.

Moreover, some of the measures the NYPSC seeks to adopt involve number reclamation and mandatory fill requirements. Although in theory those conservation methods can be useful and

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<sup>1</sup> Common Carrier Bureau Seeks Comment on New York Department of Public Service Petition for Additional Authority to Implement Number Conversation Measures, NSD File No. L-99-21, DA 99-462, Public Notice (rel. Mar. 5, 1999).

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should be implemented, RCN is concerned with the potential impact on competition. The NYPSC should not be given an inordinate amount of authority over a CLEC's business plans to determine whether the CLEC actually needs the numbers it has obtained. Haphazard reclamation of numbers could seriously undermine competition by robbing CLECs of an essential tool for their business. Accordingly, the Commission should refrain from granting the NYPSC more than limited authority to reclaim numbers from CLECs or limit the obtaining of numbers based on utilization rates.

**I. The Commission Should Refrain from Granting the NYPSC Authority to Utilize Untested Methods of Number Conservation Until Such Methods are Fully Developed at the Federal Level**

The NYPSC requests authority to implement several numbering conservation methods that are currently under consideration by the Commission: thousands-block number pooling, individual number pooling, and unassigned number porting. Although RCN generally supports the use of all three conservation methods, it is important that such conservation methods are adopted uniformly throughout the country. Accordingly, RCN urges the Commission to establish national rules instead of granting various state petitions piecemeal.

**A. Thousands Block Number Pooling**

The NYPSC requests Commission authority to implement mandatory thousands block number pooling. Although the NYPSC currently utilizes voluntary pooling, it states that "[m]andatory pooling would be more effective than the voluntary trials currently underway."<sup>2</sup> RCN agrees with the NYPSC that thousands block number pooling can be a useful method in increasing the efficiency of number resource utilization. Indeed, RCN supported the North American

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<sup>2</sup> NYPSC Petition, at 7.

Numbering Council ("NANC") Report's conclusion that the more efficient distribution of numbers through number pooling could lead to less frequent NPA exhaust situations.<sup>3</sup>

However, RCN urges the Commission to establish the regulations anticipated by the NANC Report prior to permitting the NYPSC to adopt mandatory pooling. For example, the conclusions set forth in the NANC Report, including the establishment of a 10% block contamination threshold or the block assignment guidelines, are still being considered by the Commission. Moreover, the NYPSC does not explain in its Petition how carriers will recover the costs associated with pooling participation. This issue is also before the Commission in the context of the NANC Report.<sup>4</sup> Accordingly, it is important for the Commission to establish these guidelines in determining how exactly number pooling will be implemented and how the costs for pooling will be allocated. RCN suggests that instead of granting the NYPSC's Petition, the Commission should focus its resources toward establishing competitively neutral guidelines for number pooling that can be implemented throughout the country.

#### **B. Individual Telephone Number Pooling**

The NYPSC also requests Commission delegation of authority to explore the feasibility of individual telephone number pooling ("ITN").<sup>5</sup> Like thousands block number pooling, however, this number conservation method is still undeveloped and requires further guidelines from the

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<sup>3</sup> See Comments of RCN Telecom Services, Inc. in NSD File No. L-98-134 (submitted December 21, 1998) ("RCN Comments").

<sup>4</sup> Number Resource Optimization Working Group, Modified Report to the North American Numbering Council on Number Optimization Methods (Oct. 20, 1998) ("NANC Report"), at 104-105.

<sup>5</sup> NYPSC Petition, at 9.

Commission prior to delegation to a state commission. Indeed, even the NYPSC acknowledges the preliminary stage of ITN pooling, and stated "ITN pooling architecture has not been given significant priority because most number conservation efforts have focused on 1,000 block number pooling."<sup>6</sup> The NANC Report clearly stated that a number of matters would need to be resolved in order to implement ITN pooling,<sup>7</sup> and those recommendations are currently being considered by the Commission.

Accordingly, as with thousands block number pooling, RCN urges the Commission to refrain from delegating authority to the NYPSC prior to sorting out these issues on a federal level. The Commission is currently considering the recommendations submitted by NANC with regard to ITN pooling and should ensure national guidelines in implementing that method. As the NANC Report recommended, "the architecture, provisioning methodologies, administrative procedures, and interfaces used to support ITN pooling shall be uniform nationwide."<sup>8</sup> Granting the NYPSC authority to begin running ITN pooling trials would undermine this uniformity. Accordingly, the Commission should deny the NYPSC's request for expanded authority over ITN pooling.

### **C. Unassigned Number Porting**

The NYPSC also requests authority "to adopt unassigned number porting as an interim measure until ITN pooling becomes widely available."<sup>9</sup> Like thousands block number pooling, RCN supported the implementation of unassigned number porting ("UNP") in its comments regarding the

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<sup>6</sup> *Id.*

<sup>7</sup> NANC Report, at 43-46.

<sup>8</sup> NANC Report, at 42.

<sup>9</sup> NYPSC Petition, at 10.

NANC Report.<sup>10</sup> RCN believes that UNP should be implemented, not only in jeopardy situations, but also when a carrier with sufficient numbers, lacks the number or numbers appropriate for a specific customer. Having UNP available is essential for new entrants to be able to meet specific customer needs.

However, as with number pooling, the guidelines surrounding the implementation of UNP are still being considered by the Commission. Accordingly, RCN urges the Commission to deny the NYPSC's request until such time that the Commission releases uniform national standards for the implementation of UNP. As the NANC Report stated, "[t]he provisioning methodologies, administrative procedures and interfaces used to support UNP shall be uniform nationwide."<sup>11</sup>

**II. The Commission Should Ensure that any Enforcement Mechanisms Delegated to the NYPSC Must be Narrowly Tailored to Preserve CLEC Access to Numbering Resources**

The NYPSC not only seeks authority to implement number conservation methods, but also requests authority to adopt additional enforcement methods, such as minimum "fill rates" for assigned numbers, requiring the return of unused NXX codes, and requiring the completion of a utilization survey before numbers are assigned. While RCN generally agrees with the NYPSC that carriers should not be permitted to "hoard" numbers that they will not need in the foreseeable future, it is important for the Commission to recognize that access to numbers is essential to the business plan of any new entrant. To be able to attract new customers, CLECs must be able to offer sufficient numbering resources. Accordingly, the Commission should be careful to refrain from granting the NYPSC too much authority to make business decisions for CLECs.

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<sup>10</sup> RCN Comments, at 5-6.

<sup>11</sup> NANC Report, at 122.

**A. Fill Rates and Utilization Surveys**

The NYPSC requests authority to limit a carrier's ability to obtain new NXX codes if that carrier already holds other NXX codes with low utilization rates.<sup>12</sup> RCN urges the Commission to deny this request, because the establishment of minimum fill thresholds would artificially limit the geographic scope of a CLEC's operations. NXX codes are currently assigned by rate center. When a CLEC is beginning its operations, it should not be limited to only obtaining customers in a very limited geographic region. It is quite possible that a CLEC could attract some customers in one rate center area, and then could obtain additional customers in another rate center area. Requiring minimum fill rates would artificially hinder the CLECs' ability to obtain additional customers. It is unrealistic to expect a CLEC to build customer bases one very small region at a time. While the NYPSC clearly envisions using the minimum fill rate proposal in conjunction with number pooling, as explained above, number pooling is not sufficiently developed to implement at this time. Accordingly, without number pooling, minimum fill rates would undermine competition by severely limiting the geographic regions in which CLECs would be able to obtain customers.

For similar reasons, the NYPSC should not be permitted to conduct utilization surveys. As the NYPSC explained, it intends to use those surveys to determine whether a carrier is complying with the minimum fill rates and thus, should be permitted to obtain another NXX code.<sup>13</sup> This requirement would be used in conjunction with the minimum fill rates to unnecessarily limit the geographic scope of a CLEC's operations. Permitting the NYPSC to use minimum fill rates or

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<sup>12</sup> NYPSC Petition, at 12.

<sup>13</sup> See NYPSC Petition, at 13-14.

utilization surveys to deny CLECs additional NXX codes would seriously undermine competition. If a CLEC cannot access numbers throughout a geographic region, it will not be able to attract customers. Accordingly, RCN urges the Commission to deny the NYPSC the ability to use mandatory fill rates and utilization surveys.

#### **B. Reclamation Procedures**

The NYPSC notes that under current industry guidelines, NXX codes are to be returned to the Code Administrator if the NXX code is no longer needed or is not activated within six months of assignment. Because it claims that these rules are not being properly complied with, the NYPSC seeks authority to tighten and enforce these time frames.<sup>14</sup> Although RCN agrees that reclaiming unneeded codes from carriers is a reasonable and technically feasible method of utilizing numbering resources, RCN urges the Commission to again be cautious in the authority it grants to a state commission. In order for CLECs to be able to vigorously compete in the marketplace, they must not be forced to return NXX codes prematurely if their business plans would require those codes in the foreseeable future. For example, a CLEC may place orders for NXX codes months in advance of entering a rate center in order to ensure that it will have sufficient numbers once it begins offering services to customers. The Commission must ensure that if the NYPSC is given authority to reclaim NXX codes, the authority must be narrowly tailored to ensure that the NYPSC is not able to interfere in a CLECs' business plan. For example, RCN urges the Commission to only permit the NYPSC to take action to reclaim an unused NXX code if the carrier has held the code for a least one year.

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<sup>14</sup> NYPSC Petition, at 13.

**C. NXX Rationing**

RCN supports the NYPSC request for additional delegated authority with regard to NXX rationing.<sup>15</sup> Unlike some of the other conservation methods such as number pooling and UNP, NXX rationing determinations are primarily local decisions made in conjunction with NPA relief. RCN agrees with the NYPSC that increased authority over NXX rationing would permit it to fashion more effective NPA relief.

**D. Enforcement**

RCN agrees with the NYPSC's statements that self-policing may not be effective in ensuring the efficient use of numbering resources.<sup>16</sup> The Commission, however, should be hesitant to grant the NYPSC enforcement authority over issues that remain subject to federal jurisdiction. While it may be practical to grant the NYPSC additional enforcement authority over NXX rationing, as discussed above, conservation measures such as number pooling and UNP require the establishment of additional guidelines by the Commission before such measures can be implemented by the states. Moreover, many areas over which the NYPSC seeks enforcement authority involve number portability, which clearly remains subject to federal jurisdiction. Therefore, the Commission could grant the NYPSC increased authority to enforce purely local numbering measures and guidelines, but should refrain from granting increased enforcement authority over numbering issues that should be resolved on a national level.

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<sup>15</sup> See NYPSC Petition, at 14-15.

<sup>16</sup> NYPSC Petition, at 15.



### III. CONCLUSION

RCN commends the NYPSC for recognizing the problems of NXX shortages and taking initiative to attempt to resolve those problems. However, RCN cautions the Commission against granting the NYPSC the authority to implement measures that need to be further addressed on a national level. Conservation methods such as number pooling and UNP still need to be further developed by the Commission before being implemented by state commissions. Moreover, the Commission should also be hesitant to grant the NYPSC too much authority to reclaim numbers or otherwise require minimum fill rates and utilization surveys. Permitting the NYPSC to implement some of its suggestions could undermine competition by limiting the geographic scope of a CLECs' operations. The Commission must ensure that the NYPSC's attempt to conserve numbering resources does not unduly interfere with the business plans of new entrants.

Respectfully submitted,



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Dated: April 5, 1999

## CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Comments of RCN Telecom Services, Inc. were served by Federal Express overnight delivery and by hand delivery on the following parties on this, the 5<sup>th</sup> day of April, 1999.

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